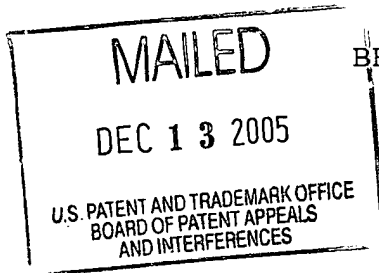


UNITED STATES PATENT AND TRADEMARK OFFICE



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte HOWARD E. RHODES

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Application No. 09/172,298

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences on October 14, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On January 13, 2005, appellant filed an Appeal Brief under the new rules set forth in 37 CFR § 41.37(c), effective September 13, 2004. However, the Appeal Brief filed on January 13, 2005 is missing the last two required headings under the new rule entitled "Evidence Appendix" and "Related Proceedings Appendix."

Subsequently, on July 28, 2005, the examiner entered an Examiner's Answer in response to appellants' Brief. Although the Examiner's Answer does comply with the headings as set forth in

the new rules under 37 CFR § 41.37(c), the Examiner's Answer is missing the required paragraph entitled "Related Proceedings Appendix." Furthermore, on page 4 of the Answer, the examiner omits claim 12 from the rejection of claims under 35 U.S.C. § 103 as unpatentable over the acknowledged prior art and Nagasaki. In addition, on page 7 of the Answer, the examiner omits the rejection of claim 11 under 35 U.S.C. § 103 as unpatentable over the acknowledged prior art and Nagasaki, further considered with Suzuki. Therefore, it is not clear from the record whether the examiner has dropped the rejection of claims 11 and 12, or whether the examiner has inadvertently omitted these claims in his rejection of claims under 35 U.S.C. § 103.

Accordingly, it is

ORDERED that the application is returned to the examiner to:

(1) notify appellant to submit a Supplemental Appeal Brief containing the required missing paragraphs of "Evidence Appendix" and "Related Proceedings Appendix;"

(2) to submit a Supplemental Examiner's Answer to include the missing paragraph under the new rules of 37 CFR § 41.37(c) entitled "Related Proceedings;"

Application No. 09/172,298

(3) to clarify for the record the rejection of claims 11 and 12 under 35 U.S.C. § 103, and written notification to appellant with respect to these claims; and

(4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: 

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CRF/clm/gw